



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
REAL ESTATE APPRAISER COMMISSION**

**500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243-1166
615-741-1831**

January 13, 2009

Third Floor Conference Room, Andrew Johnson Tower

The Tennessee Real Estate Appraiser Commission met January 13, 2009, at 9:25 a.m. in Nashville, Tennessee, at the Andrew Johnson Tower in the third floor conference room. Chairman, James E. Wade, Jr., called the meeting to order and the following business was transacted.

COMMISSION MEMBERS PRESENT

James E. Wade, Jr.
Herbert Phillips
Marc Headden
Thomas R. Carter
Jason West
Kenneth Woodford

COMMISSION MEMBERS ABSENT

Najanna Coleman
Dr. Edward A. Baryla
William R. Flowers, Jr.

STAFF MEMBERS PRESENT

Nikole Avers, Administrative Director
Jesse D. Joseph, Staff Attorney

ADOPT AGENDA

The Commission voted to adopt the agenda. Mr. West made the motion to accept the agenda and it was seconded by Mr. Headden. The motion carried unopposed.

MINUTES

The December 2008 minutes were reviewed. Mr. Phillips made the motion to accept the minutes as written. It was seconded by Mr. Carter. The motion carried unopposed.

GENERAL BUSINESS

Applicant Conference

Ms. Avers stated that there was a previously scheduled applicant conference, but the applicant was not in attendance for this meeting and the matter would be re-scheduled for a future Commission meeting.

Experience Interviews

Ann M. Chalis made application to upgrade from a State licensed appraiser to become a certified residential appraiser. Mr. Wade was the reviewer and stated that her reports were acceptable and he would recommend approval of her experience. Mr. Headden made the motion to accept the recommendation and Mr. West seconded the motion. The motion carried unopposed.

Jennifer L. Hand made application to upgrade from a registered trainee to certified residential appraiser. Mr. Carter was the reviewer and stated her reports were acceptable and he recommended approval of her experience. Mr. West made the motion to accept the recommendation and Mr. Headden seconded the motion. The motion carried unopposed.

Kimberly M. Maynard made application to upgrade from a registered trainee to become a certified residential appraiser. Mr. Phillips was the reviewer and stated that the reports were satisfactory and he would recommend approval of her experience. Mr. Headden made the motion to accept the recommendation and Mr. Carter seconded the motion. The motion carried unopposed.

Education Committee Report

Dr. Baryla reviewed the education and submitted his recommendation to Ms. Avers via e-mail, as he was unable to attend the January Commission meeting. Ms. Avers stated that, in addition to the regular education report, reconsideration of two Appraisal Institute courses were being represent because the Administrative Office of the Real Estate Appraiser Commission had been notified that the Appraiser Qualification Board's Course Approval Program (CAP) approval for the courses "Business Practices and Ethics" and "On-line Business Practices and Ethics" had both only been approved five (5) hours of continuing education. Dr. Baryla and Ms. Avers recommended that these courses (#1268 & #1273) be reduced in their approved hours to five (5) hours of continuing education. Dr. Baryla's e-mail stated that, "While the course material is mostly about professional ethics in appraisal practice; it also contains portions that are specifically oriented toward Appraisal Institute members and prospective members. The later portions do not qualify for State credit." Mr. Headden made a motion to accept both reduction in continuing education for the two Appraisal Institute courses and the education report as he recommended in the text of his email. Ms. Avers read the recommendation into the record, which was a recommendation of approval of courses number 1267, 1274, 1269 (though he noted that the title of the text reads "Mortgage Fraud", 1270, 1271, 1272. For the course 1268, "Litigation Skills for the Appraiser: An Overview" he recommended approval of only four (4) hours of continuing education rather than the requested 7 because it appeared that some of this course is related to the legal system and not conducting appraisals as under 1255-2-.06 (2). For the course number 1273 "Introduction to Expert Witness Testimony" he recommended against approval because this course does not appear to "contribute to the goal of...increasing the knowledge of...performance of real estate appraisals..." as under 1255-2-.06. Mr. Headden made the motion to accept Dr. Baryla's recommendation. Mr. Phillips seconded that motion. Discussion commenced on whether it was fair to decrease the continuing education hours granted in the course 1268 when a licensee would have to attend the course for seven hours, only to be granted four credit hours. There was also discussion about the course "Introduction to Expert Witness Testimony" and two Commission members who had attended similar courses in the past felt they were useful courses in increasing the knowledge of an appraiser. Mr. Headden and Mr. Phillips amended the recommendation to defer vote on courses 1268 and 1273 until further discussion can be held in the presence of Dr. Baryla regarding the content of these courses. Chairman Wade made a comment regarding approving the course 1268 for the seven (7) hours of continuing education and

deferring only the 1273 course. Further discussion was held regarding the content of these courses. Mr. Headden withdrew his motion and Mr. Phillips withdrew the second. The floor was open for a new motion. Mr. Woodford made a motion to accept as presented previous except that seven (7) hours of continuing education and defer vote on the course 1273 until the Commission can gather more information. Mr. Carter seconded that motion. Further discussion was held on the content of these two courses. Mr. Wade stated perhaps it would be better to table the two courses. Mr. Woodford and Mr. Carter withdrew the motion and the second. Mr. Headden restated his original motion to accept Dr. Baryl's recommendation as recommended except to defer vote on courses 1268 and 1273 until the next monthly Commission meeting when Dr. Baryl could be present for discussion. Mr. Phillips seconded the motion. The motion carried unopposed.

EDUCATION COMMITTEE REPORT

Provider	Number	Course Name	Instructors	Hrs.	Type
APPRAISAL INSTITUTE	1267	Using Spreadsheet Programs in Real Estate Appraisals – The Basics	Mark Ratterman	7	CE
APPRAISAL INSTITUTE	1268	Litigation Skills for the Appraiser: An Overview	Arlen Mills	7	CE
APPRAISAL INSTITUTE	1274	Introduction to Valuation for Financial Reporting	Michael Lohmeier	7	CE
APPRAISAL EDUCATORS, INC.	1269	115 Appraisal Fraud: A Dangerous Business	Robert Sneed	7	CE
APPRAISAL EDUCATORS, INC.	1270	117 USPAP Advisory Opinions 2008-2009	Robert Sneed	7	CE
MCKISSOCK INC.	1271	Appraising in a Changing Market	Kenneth Guilfoyle	7	CE
MCKISSOCK INC.	1272	Current Issues in Appraising	Kenneth Guilfoyle	7	CE
MCKISSOCK INC.	1273	Introduction to Expert Witness Testimony	Kenneth Guilfoyle	7	CE

LEGAL REPORT

Based on prior Commission approval, the Chairman is signing an order in the following matter:

Thomas W. Farris, Sr. (approved 9/08) - signed Consent Order agreeing to permanent voluntary surrender of his certificate as a certified residential real estate appraiser in lieu of the State taking further action relative to this complaint. This complaint involved Respondent's actions in appraising a residential property, whereby he agreed that his conduct violated T.C.A. §§ 62-39-326(4) & (5) and 62-39-329, the Ethics Rule, Conduct Section, and Standards Rules 1-1(a), (b) & (c), 1-2(c)(Comment), 1-2(e)(i), 1-3(a), 1-4(a) & (b)(iii), 1-5(a), 1-6(a) & (b), 2-1(a), and 2-2(b)(iii) & (viii) of USPAP, and Tenn. Comp. R. & Regs. 1255-5-.01(2).

1. L08-APP-RBS-2008010901 Commissioner Headden was the Reviewer

The Complainant, a consumer, alleged that during Respondent's inspection of his home in April of 2008, Respondent asked him several times about purchasing the property, and that the Respondent undervalued the square footage by more than 10% and that the appraised value was far less than another house on his street sold for in the past two years. In response, Respondent responded by contending that he refused to look at prior appraisal reports regarding the subject, that he never met the Complainant since the Complainant's daughter was the only one present during the inspection, and that he never asked anyone about purchasing the property. Respondent also contended that the subject property has a second floor loft with 5 ft. knee walls and a steep angle to the ceiling; as a consequence, Respondent considered some of this loft area to be unusable as floor space. Respondent also contended that some of the sales Complainant referred to were too old to be considered comparables, and that some of them had direct lake access as opposed to the access through the river which the subject property utilized.

Commissioner Headden's findings are as follows:

Improvements:

There is some discrepancy on size of improvements. However, there was a prior appraisal furnished by a different party and the two are within 10 square feet of each other. One other appraisal report indicates 2,420 SF. If the size has been misrepresented, this would violate USPAP SR-1-1(b) & (c) and SR-1-2(e)(i) & 2-1(a). Commissioner Headden can not accurately settle this issue with the current information.

Cost Approach:

There was no support for site value and very little said about site value. The subject is a lake lot. Sales of lake lots are needed to validate market value. The cost approach is less than market value. Cost figures are considered to be inaccurate. SR-1-4(b) (i), (ii), and (iii), 2-2(b) & 2-2(b) (viii) appear to have been violated.

Sales Comparison Approach:

The Respondent included no summary for support of how adjustments were made. The subject site has 1.01 acres. Comparable #1 has 0.42 acres. Comparable #2 has 0.61 acres. Comparable #3 has 0.49 acres. No adjustment for site size was made or noted.

Square footage adjustments were made in the \$15.00 per square foot of difference range. However, cost amount was \$98.00 per square foot and sales prices per square foot of the comparables ranged from \$109.31 to \$267.93. Also, the basement square footage was adjusted at \$5.00 per square foot of difference. The cost approach indicated \$15.00 per square foot for basement. No explanation as to why the market is so much lower on these items. The subject was built in 1990, Comparable #1 in 1977, Comparable #2 in 2003, and Comparable #3 in 1998. No age adjustment was made. Comparable #1 has a pool and fence and was compared to the subject's fireplace. These items were indicated to be equal.

SR 1-1 (A), 1-4(A), 1-6(A), & Competency Rule (2) all appear to have been violated as well.

Conclusion:

Value indications in this report have failed to be credible, supported conclusions. There appear to be errors in the report and USPAP violations noted. The cost and sales comparison approaches have not been employed correctly. This has caused errors in the report either by omission or commission. In the response to the complaint letter, the Respondent states lake sites are valued in price per front of water. However, nowhere in the report was this technique used or discussed by the Respondent.

Prior Complaint / Disciplinary History: None

Recommendation and reasoning: Commissioner Headden recommends that the Respondent be offered a consent order, with the opportunity for an informal conference, requiring that Respondent complete certain courses, and pay a civil penalty as follows: Basic Appraisal Procedures (30 hours); Residential Report Writing (15 hours); Residential Site Valuation and Cost Approach (15 hours); Advanced Residential Case Studies (15 hours); Civil penalty of \$1,000. If Respondent does not accept this proposal or request the informal conference, then a formal proceeding should be commenced. The Administrative Director and counsel for the Commission further recommend that Respondent be given a 120 day period from the effective date of such an order to deliver evidence of his completion of the above courses, should he accept the consent order.

Vote: Mr. West made the motion to accept the recommendation and Mr. Phillips seconded the motion. There was discussion about giving the Respondent 6 months, rather than 120 days, to complete the education requirements of the consent order. Mr. West amended his motion to reflect the six month time frame. Mr. Phillips reaffirmed his second to the motion. The motion carried unopposed.

2. L08-APP-RBS-2008017431 There was no Reviewer

The Complainant, a fellow practitioner, alleged that in the process of a field review of the Respondent's appraisal report, it was discovered from the homeowner that the respondent did not inspect the subject property, but instead a registered trainee conducted the inspection of the property. The appraisal report under review was signed both by the Respondent and the trainee and the report stated (by checking box on p. 6 of the URAR) that both inspected the property. There were no other scope of work statements within the report setting forth the differences in inspection of the subject property by the certified appraiser from the registered trainee.

The Respondent stated in his response letter that, "In response to the allegations contained in the complaint presented by (Complainant), my investigation concurs that it is essentially true but with substantial mitigating facts. During a typical workday, we are busy meeting client deadlines with some clients requiring an Appraiser inspection and some that accept a Trainee's inspection. Somehow this appraisal's specific inspection instructions were unseen or overlooked. I stand behind my appraisal and its conclusions but I take responsibility for failing to follow directions to physically inspect the property. I will redouble our efforts to prevent this oversight from occurring again. Please consider these other mitigating conditions:

The value and other pertinent information about the property are considered well supported opinions due in part to the following facts:

- I am familiar with the property's neighborhood
- The house is only 4 years old
- As usual, the value was developed and estimated during a conference of Appraiser and Trainee while reviewing the property's attributes, subject and comp photos, and numerous property sales. Appraiser always makes the final value judgment.
- The Appraiser trainee has worked full time here under my direct supervision for 4 years and has accumulated 3,500 hours or more experience hours including both residential and commercial appraisal hours. He is also in the process of obtaining his permanent license.

- He has proven to be an accomplished Appraiser, trustworthy, and a good property inspector.
- All company Appraisers and Trainees take both inside pictures of all rooms, foundation area, and outside pictures during the normal course of business. If applicable, pictures of unusual features or derogatory conditions are also taken.

I respectfully request that this complaint be favorably resolved in my favor. I have been appraising property without complaint almost exclusively for mortgage lending purposes since 1973.”

Prior Complaint / Disciplinary History: None

Recommendation and reasoning: Because of the Respondent’s apparent failure to accurately identify the scope of work actually performed by all persons signing the certification or contributing significant appraisal assistance, the Scope of Work Rule of USPAP appears to have been violated. For that reason, counsel and the Administrative Director believe that issuance of a letter of instruction and caution appears an appropriate resolution to this matter. There is no evidence of prior violations of this USPAP requirement, but the matter appears to present a clear, although possibly unintentional, misleading description of the inspection of the subject property in this appraisal assignment. A letter of instruction and caution is not a disciplinary sanction, but does maintain a record in the complaint file that accurate scope of work disclosures are a requirement of USPAP.

Vote: Mr. Phillips made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

3. & 4. L08-APP-RBS-2008019201 & 2008019211 Commissioner Woodford was the Reviewer

2008019201

In the first complaint, the Complainant, a mortgage lending institution, had a field review of an appraised property on 10/18/03, effective as of 9/19/03. The field review appraiser alleged that the Respondent over-valued a condominium unit in Respondent’s 9/19/03 appraisal report by failing to subtract for seller concessions from the comparable sales used in the sales comparison approach and contended that the location map was incorrect.

The Respondent stated in his 9/8/08 response letter that, he no longer has this appraisal work file. His appraised value on that date was \$89,900, and he further stated that comparables 1 and 4 were from outside the development and 2 and 3 were the only available closed sales available (in the development) at that time; that comparable two sold for the same price it was listed and that sale 3 was listed for \$89,900 and sold for \$87,950; and that he doesn’t recall having found any indication that there were seller concessions for these two properties. He also stated the subject property sold subsequent to this appraisal for \$89,900 in April of 2004 and again in 2006 for \$96,000 and he was not involved in either transaction.

Commissioner Woodford’s review of this matter is summarized as follows:

The first sale was located outside of the development and sold at \$95,000. Information indicates a \$2,000 seller concession which would indicate a net sale price of approximately \$93,000. This unit was roughly

twenty percent larger than the subject and contained an additional bath. This would be the least similar property based on characteristics.

Sale No. 2 is located in the same development and offers essentially the same size layout, etc. This property sold at \$89,900; however, it involved FHA financing which included a seller concession that equated to approximately \$10,000. The property indicated value at \$89,900, which on cash equivalent basis, should have been closer to \$80,000.

Sale No. 3 is also in the same development and has the same characteristics demonstrated by Sale No. 2. The property sold at \$87,950 prior to consideration of seller concessions that equated to approximately \$10,000.

Sale No. 4 is located outside the development approximately 2.3 miles from the subject property. This property is reported to have sold for \$101,120. However, the property was subsequently listed prior to the sale at \$93,900, which indicates a significant seller concession. This property was approximately 35% larger than the subject and is not considered a good comparable.

Most credibility is given to Sales 2 and 3, which were in the same development and offered similar characteristics. These properties sold at \$87,950 and \$89,900 with a sale price involving a significant seller concession of approximately \$10,000 each.

Commissioner Woodford is of the opinion that the production of this report by Respondent on 9/19/03 with that conclusion at \$89,900 is misleading within the definition of market value utilized.

With respect to compliance with USPAP, Commissioner Woodford is of the opinion that Respondent's actions in this complaint have violated:

Standard Rule 1.1(b) -- The Respondent is considered to have committed a substantial error of omission that significantly effected the appraisal. This relates to the consideration of seller concessions which rendered the appraisal misleading.

Standard Rule 1-4(a) -- The Respondent is considered to have violated this standard in that while performing the sales comparison the appraiser did not adequately analyze the comparable sales or omitted consideration of seller concessions which resulted in a misleading value indication.

Standard Rule 2-1(a) -- The Respondent is considered to have violated this standard in that the appraisal is set forth without disclosure of seller financing and resulted in a misleading conclusion.

ETHICS RULE/CONDUCT SECTION -- The Respondent is considered to have violated the conduct section of the ethics rule in that he communicated an appraisal in a misleading manner. It is obvious that the Respondent understood the type of financing in that the sales were indicated as FHA sales and listing briefs were available. The listing history and subsequent sale was available and should have been known by the Respondent. For instance, Sale No. 3 had been listed in March and April of 2003 in the range of \$80,000 prior to its sale at \$87,950 in July.

2008019921

In this second complaint, the Complainant, a mortgage lending institution, had a field review of an appraised property, and a second appraisal developed in early May of 2006. The field reviewer and

second appraiser alleged that the Respondent in his 4/12/06 appraisal over-valued a residential property, misreported the subject improvement's condition, used comparable sales of superior condition without adjustment in the sales comparison approach, and misapplied the cost approach.

The Respondent stated in his response letter that: he did not retain the old Marshall & Swift cost pages from that time period (2006) when he received updates from Marshall/Swift; the only noted condition made was a gutter in the front left of the dwelling that needed paint and repair and was considered a minor repair; the driveway was gravel and appeared serviceable and that he made an adjustment for comparables with paved driveways; he did not believe the comparables were in superior condition and did not make any adjustments in the sales comparison approach; comparable sale 1 is just down the street and "looks just like the subject property from the street"; comparable 2 is located on the next street over and also appeared similar; comparable 3 was used because it had an unfinished basement; that the subject is currently listed for \$224,000 (after he appraised it in 2006 for \$202,000), and that he does not believe the subject was over-valued.

As to the versions of the Respondent's 4/12/06 report submitted by the Complainant in August of last year, and the Respondent's version submitted on September 17 of last year, the following evidence of alteration committed by Respondent appears: (1. Comparable Two in the sales grid is not the same in the copy of the report sent in by the Complainant and the copy sent in by the Respondent. The effective date and date signed are the same in both report and neither report contains statements that the report has been altered or changed subsequent to delivery to the client in any way. The Complainant's report submitted contains a sale with a lower adjusted sale price of \$180,000. The report submitted by the Respondent has a different sale with an adjusted sale price of \$202,000. (2. The bathroom adjustment in the report submitted by the Complainant was \$500. The adjustment made in the report submitted by the Respondent was \$1,000. This could be an indication of intentionally inflating the value opinion. (3. The allotment for "Cov Porch, Appl" was altered. In the Complainant's report the figure was \$6,000 and in the Respondent's submission \$8,000. This appears to have been completed to raise the figure to exactly \$202,000 which was the final value opinion indicated in the sales comparison approach.

With respect to compliance with USPAP, Commissioner Woodford is of the opinion that Respondent's actions in this complaint have violated:

SR1-1(a) -- It appears that in the utilization of the cost approach the appraiser utilized cost that cannot be justified. The value estimated is market value which is cited to be in terms of cash or in terms of financial arrangement equivalent to cash or in other precisely defined terms. The substituted sale (in the possibly altered report) included an obvious adjustment as the property was listed at \$200,000 and subsequently sold for \$205,000. It appears that in the production of a credible appraisal, the Respondent should have made an adjustment or at least explained the variance.

ETHICS RULE – CONDUCT SECTION -- The Respondent is believed to have violated the conduct section of the ethics rule which requires that an appraiser not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report.

In this case, it appears that the Respondent has attempted to utilize the higher priced/better conditioned properties in the area and applied that comparison to a property with significant deferred maintenance without adjustment. It appears the Respondent has failed to utilize sales that are considered more similar

as to condition which would have likely resulted in a non-misleading report. Additionally, it is noted that there was a second appraisal submitted by Respondent bearing the same date which included additions to the cost approach as well as a sales substitution in the sales comparison approach (with no explanation) which are questionable and appear to be an attempt to increase the value conclusion. The substituted sale (in the possibly altered report) was actually an older sale than the sale which it replaced and required greater net and gross adjustments. This sale substitution increased the indicated value by \$22,000 between the original sale and the replacement sale.

Additionally, the original appraisal (submitted by Complainant) indicated that Sale No. 2, which was later replaced, was given the most weight. However, the conclusion Respondent reached in the original report does not appear to equate with that statement. Sale No. 2 of the original report adjusted to an indicated value of \$180,000 while the conclusion from the sale comparison approach was \$198,000, approximately \$5,000 higher than the mean of the three sales listed within the original report. On the adjustment or subsequent appraisal, the value indication was increased to \$202,000, which was achieved by the unexplained substitution spoken of earlier.

SR1-1(b) -- The utilization of the incorrect cost data appears to be a substantial error that affects the appraisal.

SR1-4(a) -- It appears that sales which were credible were not used or considered while sales which tended to be superior were used.

SR1-4(b)(ii) -- The requirement is that comparable cost data is used to estimate the cost of the improvements. It appears that the cost data collected or utilized was not documented especially as to the relevance to the Residential Cost Handbook.

Prior Complaint / Disciplinary History:

943901	(Dismissed)
947060	(Consent Order – 30 hour Procedures course & appraisal log)
200500458	(Dismissed)
200600145	(Consent Order - \$2,000 and 8 month Suspension)

Recommendation and reasoning: Commissioner Woodford recommends that a consent order be offered to Respondent revoking his certification, and that if he does not accept it, that a formal proceeding be commenced seeking such revocation.

Vote: Mr. Phillips made the motion to accept the recommendation and Mr. West seconded the motion. The motion carried unopposed.

5. L08-APP-RBS-2008021681 Commissioner Woodford was the Reviewer

This complaint was submitted by a lender and included allegations that, in her 11/21/07 appraisal of a residential property, the Respondent failed to describe the condition of the subject property adequately to support the use of renovated comparables, failed to summarize the analysis of the sales, transfer and listing history of the subject and comparable properties, failed to support adjustments for gross living area and basement, failed to analyze possible seller concessions for comparable sales 2 and 3, failed to support the lack of adjustments made for design and quality, and misreported the bedroom totals.

The Respondent stated in her response letter that, "I considered the subject property to be in average condition for this area, the subject area is made up of a wide range of property values, some have been renovated others have not. After further research, I feel the sales applied had been slightly more renovated than the subject property; however, they were applied due to location, size and age. This is such a desirable area due to proximity to Interstate access and the downtown area; all comparable sales applied in my appraisal report are within blocks of the subject property. As to the failure to summarize the analysis of the sales, transfers of sales of the comparables were stated; sales 1 & 3 had sold in the past 36 months. The subject has a quit claim recorded, which I did not state due to it being the same owner/borrower who purchased the subject." She further stated pertaining to lack of support for adjustments for GLA and basement, "The upper level of the subject property has a finished bedroom, this area has no central heat and air system, it has window and baseboard heat, therefore the adjustment for this gross living area would be less, an average was determined. The subject also had a bedroom in the finished basement area of the dwelling, this was given a very conservative adjustment due to quality of finished area." As to the seller concessions, the Respondent stated, "sales concession of 2 to 5 percent are typical in this market area. This sale has sales concession of approximately 3 percent which is not excessive for this area." No adjustment was applied. The Respondent stated pertaining to quality and design adjustments that, "I did not feel a design adjustment was necessary due to all being similar in design, and in quality. All sales of the subject were built within a short time frame for this area. Quality of construction was considered, in my opinion, to be similar." Finally, as to misreporting the bedroom count she stated that, "I was inside the subject property and the review appraiser was not. I stated 3 bedrooms, there are 3 bedrooms, 2 on the main level, one on the upper level. The bedroom in the basement was not counted in the above grade room count."

After consideration of the specific components of both the complaint and the Respondent's written response, Commissioner Woodford's analysis is as follows:

Two of the comparables used had prior sales significantly lower in price than the recent sales. This indicates some physical change in the property as the date between prior sale and resale was minimal. For instance, Sale No. 1 which sold in September 2007 at \$174,900 had previously sold March 15, 2007 at \$98,200. This significant increase in a four month time period would indicate a significant physical change in the property.

Sale No. 3 sold January 2007 at \$76,000 and resold in May 2007 at \$160,000. This sale and resale data again suggests significant changes in the property between the two sale dates. These observations are substantiated by the listing briefs which indicate renovations. As to Sale No. 1, the remarks state that the property offers a brand new kitchen, new cabinets, and granite countertops, "one of the best renovations in East Nashville".

Sale No. 3 indicates "major renovation just completed". All new kitchen, ceramic tile in kitchen, new fixtures throughout, updated electric, plumbing, new central heating & air conditioning, partial new roof, new windows, new finishes, etc. It seems reasonable that if the subject had been renovated and was actually comparable to the sale properties as to the condition, appeal, etc. that comments to that regard would have been made by Respondent in the appraisal (she did not make any such comments). The significant difference between the comparable 1 and 2 prior sale prices and their prices after renovation suggests that the comparison should have required Respondent to make a significant negative condition adjustment, or to utilize other comparables which had not been renovated.

As to sale financing concessions not being properly reported by Respondent, comparable No. 2 was listed at \$149,900 and sold at \$154,500. Seller participation is indicated at \$4,600. The actual sale price was therefore the original list price of \$149,900 on a cash or conventional basis.

The Respondent comments in her written response that she utilized renovated sales that were near the subject as opposed to likely more similar sales that were located further from the subject (utilized by the field review appraiser). This, however, differs from and is inconsistent with what appears in the appraisal copy submitted to the Commission office by the Respondent -- which includes a second location map which includes three additional sales other than those presented within her appraisal. These sales are numbered sales 4, 5 and 6 and represent the same sales utilized by the field reviewer. It would therefore appear that at some time, the Respondent may have considered these three additional sales, either as additional sales provided to the lender or as sales considered but subsequently eliminated from the appraisal.

With respect to compliance with USPAP, Commissioner Woodford is of the opinion that the Respondent's actions in this complaint have violated:

ETHICS RULE/CONDUCT SECTION -- The concerns considering the conduct section of the ethics rule may or may not be applicable in this instance and should be investigated further with the Respondent. The conduct section requires that an appraiser not advocate the cause or interest of any party or issue and not communicate assignment results in a misleading or fraudulent manner.

On reviewing this complaint, it is noted that the appraisal submitted with the Respondent's written response included a location map with included three additional sales which were not set out within the appraisal itself. These additional sales are those same properties considered by the field reviewer.

It is Commissioner Woodford's opinion that the ethics rule/conduct section has been violated if those sales were being considered by the appraiser but eventually eliminated from the appraisal submitted to the lender. If these sales were included as an attachment to the appraiser's submission to the Commission and were used only to identify the location of the sales considered by the reviewer, Commissioner Woodford's concerns would be satisfied and this section would not be applicable.

Standard Rule 1-1(b) -- The Respondent appears to have violated this Standard inasmuch as a substantial error that affected the appraisal conclusion was committed inasmuch as the Respondent failed to adequately recognize the condition of the comparable properties relative to the subject property. This is substantiated by the comparison of recent sale compared to prior sale and the extensive renovation noted for the comparables considered. Inasmuch as the sale price differences between the prior sale and the more recent sale, the comparables were indicative of significant renovation coupled with the Respondent's minimal adjustment for condition leads to the conclusion that a significant or substantial error was made.

This is further substantiated by the reference to other sales in the general area provided in The field review appraisal which showed prices which appear to be more in line with average quality properties (non-renovated such as the subject).

Standard Rule 1-4(a) -- This Standard requires the Respondent in a sales comparison approach to analyze such comparable sales data as are available to indicate a value conclusion. In this instance, the Respondent has failed to recognize the significant renovation as well as sale concessions in consideration of these differences and adjustments for those differences were not made.

Standard Rule 2-1(a) -- This Standard requires that the appraisal set forth clearly and accurately information that is not misleading. The application set out within the appraisal failed to inform the reader of the condition of the sale properties and the lack of adequate adjustment for those differences.

Standard Rule 2-1(b) -- This Standard requires sufficient information to be provided within the report enable the intended user to understand the report properly. In this instance, the report itself fails to identify the significant renovation to the comparables and therefore this requires adjustment for conditions which was not made by the Respondent.

Prior Complaint/Disciplinary History: None.

Recommendation and reasoning: Commissioner Woodford recommends further investigation, and if counsel and the Administrative Director's further investigation into the possible Ethics Rule violation is indicative of such a violation, then a consent order should be offered to the Respondent imposing a 6 month suspension of her certificate and a \$ 2,000 civil penalty. If the additional investigation does not bear out this possible violation, then the Respondent should be offered such a consent order imposing only the \$2,000 civil penalty. In either instance, the Respondent should be offered an informal conference, and a formal proceeding should be commenced if she does not accept the specific proposed consent order she is sent.

Vote: Mr. Carter made the motion to accept the recommendation and Mr. Headden seconded the motion. The motion carried unopposed.

6. L08-APP-RBS-2008023621 Commissioner Headden was the Reviewer

This complaint was submitted by a fellow practitioner and included allegations that the Respondent in a residential appraisal report with an effective date of 8/30/2007:

1. Failed to report that the subject property was listed for \$199,900 at the time of the effective date of the appraisal report and over-valued a residential property by including a value opinion of \$310,000.
2. Failed to report the subject was an over-improvement for the neighborhood.
3. Failed to disclose that the subject was a foreclosure property at the time of the appraisal.
4. Failed to support square footage adjustments.
5. Misreported the sale price of comparable 3.
6. Failed to make adjustments for superior condition of the comparable properties.
7. Omitted a work shop from the amenities adjusted in comparable 1.
8. Failed to adjust for the superior location of comparable 3 & 4 and misreported their distance.
9. Misreported the ownership information as of the effective date of the report.
10. Failed to summarize the condition of the subject property as of the effective date.

The Respondent stated in his response letter that, regarding number items above:

1. The date of MLS listing of the subject was 9/11/06 for \$199,900 and it expired on 7/19/07 and had a sold date of 8/8/07 and that he commented "no current listings found" because it had an expired

listing date and sold date. He commented on the field review appraiser's comparables used pertaining to the allegation of over-valuing, stating that comparables 2 and 3 were "too far" and "below market" without further explanation. He also contended that the review appraiser's adjustments weren't supported. The Respondent stated he used six comparables in his report of similar age and gross living area.

2. With respect to the subject being an over-improvement, the Respondent stated all comparables used were of similar gross living area and age and in close proximity.
3. The Respondent stated he didn't clearly understand the allegation that the subject was a foreclosure sale. He stated that the, "title work is cloudy. Register sale data shows recorded date 7-11-07 LaSalle Bank to Morris Harris (for) \$199,900". (Respondent did not report this sale in his appraisal report.)
4. In response to the supported adjustment for GLA, the Respondent stated the adjustment was made at \$60 per square foot, which was taken from the market, and applied to all six comparables.
5. With respect to the allegation that he misreported the sale price of Comparable 3, he stated the review appraiser used the wrong address. (Both the review appraiser and the Respondent misreported the address. The MAAR record sent in by the Respondent identifies a slightly different address than reported in the appraisal. It is unclear if the distance of this comparable was also misreported.)
6. The Respondent stated no adjustment was made for condition because the subject was in average condition.
7. Pertaining to the omission of the workshop of comparable one, he stated he found no information about a workshop on MAAR data and no visual. (28' x 13' Shop reported on MLS information submitted by the Complainant.)
8. The Respondent stated his location map was correct and no location adjustments were necessary.
9. The Respondent stated he reported the correct ownership information as of the effective date of the report.
10. With respect to the failure to summarize the condition of the improvements, he stated the report states normal physical condition and average condition.

Commissioner Headden's findings are as follows:

Sales History and Listing:

The subject property was listed at the time of appraisal for \$199,900. It had been listed for over 250 days. The report indicated no current listing. This is a clear violation of SR 1-5(a) and SR 2-1 (a) & (b).

The report indicated a contract price of \$310,000. No analysis of contract was performed by appraiser. The appraiser indicates "contract not provided". The appraiser indicates prior sale on 06/27/2005 for \$340,000. However, on 05/05/2006, the property transferred to owner displayed on report for \$288,300. This is clearly a violation of SR 1-5 (a) & (b).

Improvements:

The subject appears to be larger than most in the area. The subject was a foreclosure that was listed for resale by the bank. Appraiser provided no discussion about possible over improvement or the fact that the subject was foreclosed and bank owned. The additional features section of the report is left blank. This is a violation of the Ethics Rule, Conduct section lines 247-248, Scope of Work lines 426-427, 439-

440, 449-450 and Disclosure obligation lines 452-453. SR 1-1 (b) (c), SR 1-2 (e)(i), SR 1-3 (a), SR 2-1 (a)(b), SR 2-2 (b)(iii).

Cost Approach:

There was no support for the site value. In the cost approach section of the report it states "none". This is a violation of SR 1-4 (b) (i), (ii), & (iii), SR 2-2 (b) (viii).

Sales Comparison Approach:

No summary for support of how adjustments were made. Comparable #2 is adjusted at \$60/SF of difference. Its sales price was only \$55.54/SF. No condition adjustment or age adjustment was made to this comparable. An explanation is required for this. Comparable #3 indicates sales price as \$390,000, when public records show \$368,000. It was listed for \$377,000 and then lowered to \$366,000. There is no explanation. Other adjustments are inconsistent. Violations include Competency Rule (2), SR 1-4 (a), SR 1-6 (a)&(b), SR 2, SR 2-1 (b), SR 2-2 b (viii).

Reconciliation:

This area's summary does not address the cost approach. Violations include SR 1-6 (a) & (b) and SR 2-2 (b).

Conclusion:

Value indications of this report have failed to be credible, supported conclusions. There are numerous errors in the report and definite USPAP violations. In addition to this report dated 07/06/2007, in the appraiser's response to the complaint, it appears that a recertification of some type was performed on 11/05/2007. These same errors were transferred to the report, as well as other violations. This would include the Ethics Rule, record keeping section.

Prior Complaints/Disciplinary History: None.

Recommendation and reasoning: Commissioner Headden recommends that the Respondent be offered a consent order (and the opportunity for an informal conference) including the following provisions: completion of a 15 hour USPAP course (no credit); a Basic Appraisal Procedures (30 hours)(no credit); a Residential Report Writing course(15 hours)(no credit); a Residential Site Value/Cost Approach course (15 hours) (no credit); a 3 month suspension; and a \$5,500 civil penalty. Respondent must provide evidence of completing the above referenced courses and payment of the penalty before his certificate can be reinstated. If Respondent does not accept this proposal, a formal proceeding should be commenced seeking the suspension of his certificate as a certified residential appraiser.

Vote: Mr. West made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

7. L08-APP-RBS-2008025561 No Reviewer was necessary

This complainant was submitted by the Mississippi Real Estate Appraisers Board which included allegations in the complaint that the Respondent violated USPAP in real estate appraisal reports on two properties appraised in Mississippi and that he had either surrendered, retired, or tendered his real estate appraiser credential in response to open complaint matters in Mississippi. The Respondent was granted a credential in Tennessee through reciprocity with Mississippi.

The Respondent has not responded to this complaint matter; however, he did send in his wall certificate for his credential and stated he wished to retire his credential in response to a previously opened complaint. The Respondent was contacted by staff and legal counsel and verbally agreed to a consent order for voluntary surrender of his certified residential real estate appraiser credential. This consent order for permanent voluntary surrender has been signed today.

Prior Complaint / Disciplinary History: 200207074 (Closed with agreed order - \$1,500 civil penalty and 30 day suspension)

Recommendation and reasoning: Since the Respondent has signed the consent order for voluntary surrender in the 200801540 complaint matter, staff and counsel for the Commission would recommend closing this complaint and flagging this complaint file to note the resolution of the other complaint matter – which is voluntary surrender in lieu of the State taking further disciplinary action.

Vote: Mr. Carter made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

8. L08-APP-RBS-2008026721 No Reviewer was necessary

The North Carolina Appraisal Board notified the TREAC administrative office that the Respondent's reciprocal certification had been revoked in NC and included a copy of their final order in their correspondence. This order was in response to the Respondent's Florida certification having been also revoked because of misrepresentations of his supervision of trainees in Florida when he lived in North Carolina and also failing to notify the Board of his changed of address, misrepresenting inspection in at least seven appraisal reports, failing to exercise reasonable due diligence in developing an appraisal report, failing to retain copies of appraisals and workfiles, violation the ETHICS RULE and Standards 1 and 2 of USPAP. The Florida Board revoked his certification and ordered him to pay a \$10,000 administrative fine within 30 days of the date of the order. The Respondent has not paid this fine. The order further alleged the Respondent failed to notify the NC Board that his credential had been revoked in Florida.

The Respondent signed the certified mail green card on December 15, 2008 evidencing his receipt of the complaint, but has not submitted any response to the TREAC office as of this date.

Prior Complaint / Disciplinary History: None

Recommendation and reasoning: Staff would recommend that a consent order of revocation of his Tennessee certificate be sent to the Respondent in this complaint matter. If the order is not accepted then formal proceedings should be commenced.

Vote: Mr. Headden made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

9. L08-APP-RBS-2008026971 No Reviewer was necessary

The Complainant, a consumer, alleged that the Respondent accepted an appraisal fee on June 10, 2008, but has not delivered the appraisal report as of December 12, 2008.

The Respondents stated in his response letter that the Complainant, the homeowner, was not the client in the appraisal assignment. He stated he delivered the appraisal report to his client, a named mortgage company. He stated he was subsequently contacted by the homeowner who requested a copy of the appraisal report. He stated he couldn't give the homeowner the report until he had permission from the client, but when he contacted the client, he alleged that they stated they would "take care of it". At the end of July he received a letter from the Complainant/homeowner threatening a lawsuit. He stated he contacted his client again and they told him "don't do anything. I'll talk to him (homeowner)" and that they would send the homeowner the appraisal report. He stated when this complaint was filed he called the client again and was told the loan officer no longer worked there, but was given permission to send the homeowner the appraisal report by the client. He stated he sent the report to the Complainant on December 17, 2008 and spoke to the Complainant and he was thanked for sending the report.

Administrative Staff Observations by Administrative Director from complaint file; (this is not an appraisal review):

The Respondent sent as proof a copy of the appraisal report which has an effective date of June 10, 2008 and a date signed of June 12, 2008. He also sent the fax release from the client which is signed and dated December 17, 2008. In addition, the Complainant e-mailed confirmation of delivery of the report directly to the Real Estate Appraiser Commission confirming that they had received the appraisal report; this e-mail is dated January 1, 2009.

Prior Complaint / Disciplinary History: 200801872 (Dismissed)

Recommendation and reasoning: Dismissal due to no violation because the appraiser followed the requirements of the ETHICS RULE – Confidentiality section in that he gave the report to the client and not homeowner until such time as he had a release to communicate the assignment results.

Vote: Mr. Phillips made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

Appraisal Subcommittee Report

Kristi Klamet and Jenny Tidwell, policy managers of the Appraisal Subcommittee of Congress (ASC), were present to provide the Real Estate Appraiser Commission with a summary of their finds of their field review which have been conducted over the past two days (January 12-13, 2009). They gave an overview of who they were and the members of the ASC staff. Ms. Klamet provided a summary of how Title XI (FIRREA) created the Appraisal Subcommittee and the field review process for States. She covered the findings of the past field review in December of 2006 and the follow-up visit in 2007. She stated there were four areas of concern noted in 2006. These were: 1. complaints were not investigated and resolved in a timely manner (within 12 months), 2. complaint files lacked adequate documentation regarding the Commission's decisions, 3. temporary practice permits were not being processed within five (5) business days, and 4. the Tennessee Real Estate Appraiser Commission regulations did not conform to AQB criteria in that no experience credit could be given for text book authorship and that the 15 hour USPAP course had to be taught by an approved AQB instructor. She stated that all of the concerns found in 2006 had been correct, except for one. This one area that has not been completely resolved was enforcement of complaints in a timely manner. She stated when the policy managers go into a State for a field review, they generally look at how the State processes: temporary practice permits, new applications, reciprocal applications, renewals, education files, enforcement and complaint files, they review the

minutes over the entire review cycle period. They also review the current statutes and regulations. They stated a lot of the review work is done on the front end before they arrive. She discussed the specifics of how each of those review areas were looked at by the field auditors in regards to the ASC policy statements. She also stated they look at whether the State is using the national registry, if the licensing data is being submitted timely, and if the State reporting disciplinary actions timely. She reported that Tennessee is complying with all of those requirements. She stated that they look at education that is currently approved as part of the review process. She stated there was some concerns regarding documentation some of the older courses on the approved course list. This documentation is necessary, she added, as the requirements for continuing and qualifying education change these courses need to be reevaluated. She also stated it is important for the Commission to know that courses that are CAP approved should still be looked at by the Commission and it is within the Commission's rights to allow different hours depending on how the specific statutes and regulations are interpreted. She stated that Tennessee's licensing and certification applications were well documented, including experience review prior to upgrade. She stated that for renewals, one hundred percent of the continuing education was being audited by the Administration, and they found no problems. She stated that Tennessee has good reciprocity with over 30 States and that the process for recognizing applicants from non-reciprocal States is done in a manner that is encouraged by the ASC. She stated the one area of concern is still the enforcement area. She stated at this time, that currently there are 70 open complaints, and thirteen were over one year, but she stated that of those thirteen complaints there are only five (5) Respondents. She stated that shows very good progress in reducing the numbers of complaints over one year. In 2006, Tennessee had 22 complaints that were over one year old, so the reduction is very significant. She also stated that of those thirteen, only one is significantly over one year and that that complaint matter is scheduled for formal hearing next month. She stated that it is important for States to resolve complaints within one year, in compliance with Policy Statement 10. She added that based on her recommendation to the ASC that would likely be the only area noted in the letter to the State. She also added that she will recommend that Tennessee continue to be on the two year review cycle. Ms. Tidwell added that she wanted commend the Commission on the quality of the processing of complaints as well. She stated that they look at quality of the process all the way through to see if the State is handling the complaints appropriately, that the Commission takes appropriate disciplinary action, and that investigations are to the depth that they need to be. She just wanted to commend the Commission on the quality in the program and timely, especially with such short staff. They also wanted to know note that the Commission has had a significant increase in the number of complaints submitted to the program. Ms. Klamet stated that since the last field review the Commission has received two hundred one (201) new complaints. She concluded that there is a new process on the formal letter process from the ASC. Chairman Wade wanted to comment that the Commission has been operating short handed and under a budgetary crisis. That being said, he wanted the ASC to know that this Commission and the last Commission has worked very hard to reduce the number of complaints that exceed the ASC requirements. There was some discussion on reciprocity and federal budgetary possibilities to assist State's that are in need of additional resources. Mr. Woodford asked the members of the ASC if there were any potential to get a rebate of the registration fee (sent into the ASC by the States) to the State Real Estate Appraiser Commissions to carry on these activities. He stated from the ASC Annual Report book there appears to be some five million dollars (\$5,000,000) in the ASC revenue report. It appears, he stated, they were gaining about four hundred thousand to five hundred thousand dollars (\$400,000 to \$500,000) per year and that (TREAC) could really used the funding. They responded that it would take a legislative change. They stated there was a bill previously that was introduced, that never went anywhere, but they anticipated another bill being submitted in the future that may have more energy behind it. They stated they are anticipating another bill, but they don't know what areas it would cover so far as funding. Ms. Avers added that The Appraisal

Foundation, The Association of Appraiser Regulatory Officials (AARO) and the Appraisal Subcommittee of Congress (ASC) were working together on some upcoming assistance to State programs. For Example, AARO had developed two courses "Investigator Training" and "Board Member Training". The Appraisal Foundation is working on an agreement to sponsor the "Investigator Training" course four times per year in different states in order to better train the States in investigator training for enforcement. The funding for that course would come from a grant from the Appraisal Subcommittee. There was also some additional discussion on the Association of Appraiser Regulatory Officials (AARO) and the benefits provided by membership by the States.

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Being no further business, the meeting was adjourned at 11:20 a.m.

Chairman, James E. Wade, Jr.

Nikole Avers, Administrative Director